IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 910 OF 2005
IN
EXECUTION NO. 21 OF 1995
IN
AWARD NO.64 OF 1994

Sunder Rijumal Khiani .....Applicant
Versus
Nari Rijumal Khiani and Ors. .....Respondents

Shri.Anil Lulla i/b. K.C. Nichani for the Applicant
Shri.Mahendra Ghelani i/b. Law Charter for Respondent No.1 and 2.

Shri N.G. Thakkar, Sr. Counsel with G.C. Mohanty i/b. Kirit Damania for Respondent Nos.3 to 5.

Mr. M.H.I. Patel, Representative of Court Receiver.

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AND

CHAMBER SUMMONS NO. 911 OF 2005
IN
EXECUTION NO. 21 OF 1995
IN
AWARD NO.64 OF 1994

Sunder Rijumal Khiani .....Applicant
Versus
Metharam Rijumal Khiani and Ors. .....Respondents

Shri.Anil Lulla i/b. K.C. Nichani for the Applicant
Shri.Mahendra Ghelani i/b. Law Charter for Respondent No.4 and 5.

Shri N.G. Thakkar, Sr. Counsel i/b. Kirit Damania for Respondent Nos.1 to 3.

Mr. M.H.I. Patel, Representative of Court Receiver.

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AND

CHAMBER SUMMONS NO. 1125 OF 2005
IN
EXECUTION NO. 21 OF 1995
IN
AWARD NO.64 OF 1994

Shri Nari R. Khiani & Anr. .....Applicants
Versus
Mr. Sunder R. Khiani & Ors. ....Respondents

Shri.Mahendra Ghelani i/b. Law Charter for the Applicants.

Shri N.G. Thakkar, with G.C. Mohanty i/b. Kirit Damania for Respondent Nos.2 to 4.

Anil Lulla i/b. K.C. Nichani for Respondent No.1

Mr. M.H.I. Patel, Representative of Court Receiver.

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CORAM : SMT. NISHITA MHATRE, J.
DATE : DECEMBER 13, 2005

P.C.

1. The Chamber Summons Nos.910 of 2005 and 911 of 2005 have been moved by the same Applicant against his family members. In Chamber Summons No.910 of 2005 the Applicant Sunder has prayed that directions be issued to the Court Receiver to pay him an amount of Rs.64,45,336/- out of the funds receivable by Respondent Nos. 1 to 2 together with interest at the rate of 18% p.a. on Rs.20,00,000/- from the date of the Award till the date of payment.

2. The Chamber Summons No.911 of 2005 has been filed for a direction to the Court Receiver to pay an amount of Rs.40,77,085/- inclusive of interest at the rate of 18% p.a. on Rs.13,90,085/- from the date of the Arbitral Award till the payment. The Applicant has further sought an amount of Rs.1,67,36,655/- and further interest at the rate of 18% p.a. on an amount of Rs.57,10,876/- from the date of the Award till the

payment. In the alternative attachment of certain properties is prayed for.

3. The Chamber Summons No.1125 of 2005 has been filed by the Respondent Nos.1 and 2 in Chamber Summons No.910 of 2005. The main prayer sought in this Chamber Summons is that no amount should be paid over to Respondent No.1 that is the Applicant in Chamber Summons No.910 of 2005 till he executes and hands over to the Applicants release papers in writing in respect of flat No.91B, Embassy Apartments, 46, Nepean Sea Road, Mumbai - 400 036. By prayer clause (c) to the Chamber Summons No.1125 of 2005 the Applicants seek certain directions against Respondent No.2, Metharam. Respondent No.2 and the Applicants in the Chamber Summons have agreed to certain terms and conditions for settlement of the prayer clause (c) sought in the Chamber Summons.

4. The entire dispute relating to these Chamber Summons has arisen after an Arbitration Award, wherein various family disputes were referred for Arbitration under the Arbitration Act of 1940. The Award which is a consent Award has been passed on 31st December, 1993. A decree in terms of that Award has also been passed. Under the Award, Sunder, that is the Applicant in Chamber Summons Nos. 910 of 2005 and 911 of 2005 was entitled to amount of Rs.64,00,000/- which was to be

paid by his brothers, Metharam and Nari-Applicant in Chamber Summons No.1125 of 2005. Each of them was to contribute Rs.32,00,000/- towards the payment. Apart from this, Sunder was entitled to a certain amount of money which is lying in the custody of the Court Receiver, relatable to his share of royalty in respect of M/s. Valiram & Sons. Certain other stipulations have also been made in the Award. One of them is that Metharam and Sunder would not have any right, title or interest in aforesaid flat in 91B, Embassy Apartments, 46, Nepean Sea Road, Mumbai- 400036. Metharam and Sunder were to sign documents of transfer so that the flat could be transferred to the name of Nari and would remain his exclusive property. The other terms and conditions in the Award are not relevant for the consideration of the present Chamber Summonses.

5. There is no dispute and in fact both Metharam and Nari agreed that Rs.64,00,000/- is payable by them to Sunder. Each of them have already paid Rs.10,00,000/- to Sunder under the Award. Therefore, a balance of Rs.22,00,000/- is payable by each of them to Sunder under the Award. Both Nari and Metharam have no objection if this amount of Rs.44,00,000/- is paid over to Sunder by the Receiver from their share lying with the Court Receiver. However, the entire dispute has arisen because of Sunder’s insistence on payment of

interest from the date of the award. The Award does not grant any interest. There is no order directing payment of interest on the amount of Rs.44,00,000/- nor is there any stipulation that interest would be payable to Sunder if Nari and Metharam do not part with Rs.64,00,000/- immediately. Therefore, Sunder's insistence of payment of interest cannot be accepted in the present Chamber Summons. Unless there is an Award, order or direction for payment of interest after the date of Award, this Court while deciding a Chamber Summons from an execution application cannot direct payment of interest on the amount of Rs.44,00,000/-. Apart from this, the reason why Sunder is claiming interest on the amount of Rs.44,00,000/- is that the amount which is receivable by him is without any conditions attached and it was only because of the impediments in his way created by both Metharam and Nari that he was not paid this amount. He therefore, claims that he is entitled to the interest on the amount of Rs.44,00,000/-. The Learned Counsel for Sunder relied on the Judgment in the case of **AIR 1999 SC 1258, M/s. Jagdish Rai and Brothers Vs. Union of India**, in support of his submission that Sunder is entitled to interest at least from the date of the Award.

6. The other prayers by Sunder in Chamber

Summons No.911 of 2005 is for a direction for payment of certain amount as stated in prayer a(i) and (ii) of the Chamber Summons. The Chamber Summons is directed against the Metharam Family, who have no objection if an amount of Rs.11,60,000/- is paid to Sunder towards royalty in accordance with the earlier orders of this Court. An amount of Rs.2,30,085/- which is mentioned in Schedule - "A" is also payable to Sunder. Schedule "B" lists other amounts which Sunder claims from the personal property of Metharam. This includes Rs.44,00,000/- which he has claimed in Chamber Sommons No.910 of 2005. Therefore, there can be no dispute that Sunder is entitled to Rs.57,10,876/- mentioned in Schedule - "B" in accordance with the award. However, at the same time the family members of Sunder including Applicant No.2 in Chamber Summons No.910 of 2005 and 911 of 2005 are required to execute certain documents of discharge while receiving the amounts. As stated earlier Metharam and Nari have no objection if the amounts due and payable by them to Sunder are paid from the amount lying to their credit with the Court Receiver.

7. In my view, the following order will meet the ends of justice :

(a) The Court Receiver will pay to Sunder an amount of Rs.13,90,085/- towards

Sunder's share of royalty together with proportionate interest at the rate directed by Deshmukh, J., in the order dated 30th November, 2002.

(b) An amount of Rs.57,10,876/- will be paid to Sunder from the amount lying to the credit of Metharam with the Court Receiver. In the event the documents of discharge are not filed by Sunder's family as required in the Arbitration Award, the amount of Rs.14,155/- from the amount of Rs.57,10,876/- will be retained with the Court Receiver.

(c) Sunder shall execute all the necessary documents to transfer the right, title and interest in the flat No.91-B, Embassy Apartments, 46, Nepean Sea Road, Mumbai - 400036 to Nari within two weeks from today.

(d) On the documents for transfer of the aforesaid flat being executed by Sunder, the Court Receiver will pay an amount of Rs.22,00,000/- to Sunder from Nari's share held with the Court Receiver.

8. Chamber Summons No.910 of 2005 and Chamber Summons No.911 of 2005 disposed of accordingly.

9. Chamber Summons No.1125 of 2005 adjourned to 16th January, 2006 for consideration of prayer clause (c).